

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 63 of 1995

in

SPECIAL CIVIL APPLICATION No 11423 of 1994

PITAMBARBHAI KESAVBHAI

Versus

STATE OF GUJARAT

Appearance:

MR CJ VIN for Appellant

GOVERNMENT PLEADER for Respondent No. 1

SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of Order: 16/02/98

ORAL ORDER

This appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 11423 of 1994 decided on January 30, 1995/

The appellant is the original petitioner, being aggrieved by the order passed by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act') declaring that exemption granted under Section 20 of the Act was withdrawn in respect of land bearing survey number 76/1 admeasuring 16,289 sq.mts. The competent authority vide its order dated April 3, 1992 held that in respect of survey numbers mentioned therein, exemption which was granted vide order dated May 5, 1979 was subsequently cancelled vide order dated February 13, 1990. That order was passed, it appears from the record though orders are not on record, at the request made by the petitioner. The case of the petitioner, however, was that in respect of survey number 76/1, no such prayer was made and the exemption from operation of the Act which was granted under Section 20 of the Act was continued and was never withdrawn. The competent authority, however,

held that exemption was withdrawn and passed the order accordingly. Being aggrieved by the said order, the petitioner filed appeal being Appeal No. 84/92 and the Urban Land Tribunal, Ahmedabad vide order dated February 5, 1993 confirmed the order passed by the competent authority against which, the above petition was filed which came to be dismissed.

When this appeal came up for admission, an order was passed on March 8, 1995 which reads as under :

"The appellant should produce the application dated 26th February 1991, pursuant to which the exemption is stated to have been withdrawn. To come up for hearing on 23rd March 1995."

Thereafter the matter was adjourned from time to time. Notice was issued. We have admitted the matter and have heard the parties today.

Mr. Vin for the appellant submitted that so far as survey number 76/1, it was the case of the appellant since the beginning that in respect of that survey number, exemption was never withdrawn and no such prayer was made. According to him, that fact was also reflected in the order passed by the competent authority in its order dated April 3, 1992. Now, the said land was declared as surplus by observing that the exemption which was granted under Section 20 came to be withdrawn vide order dated February 13, 1990. Some mistake was committed by the appellant authority and also by the learned Single Judge.

Now, pursuant to the order passed on March 8, 1995 by the Division Bench, Mr. Vin has produced the application dated February 26, 1991. Relying on the prayer made in the application, he submitted that from that application itself, it is very clear that no prayer for withdrawal and/or cancellation of the exemption granted under Section 20 was made by the appellant in relation to the land bearing survey number 76/1. Hence, it was not open to the competent authority or to the appellate authority to ignore the said fact and declare that in respect of land bearing survey number 76/1 also, exemption was withdrawn. No doubt, the learned Single Judge has observed that there was typographical error on the part of the authority and the petitioner (present appellant) wants to take undue advantage of that order. Looking to the application as well as the order passed by the competent authority dated April 3, 1992, however, it appears that there was some substance in what the appellant contends. In fact, in the order dated April 3, 1992 passed

by the competent authority, a contention was raised on behalf of the appellant that exemption which was granted to land survey number 76/1. still continued. In these circumstances, it would be just and proper if the State Government again decides the matter by taking into consideration all the facts and circumstances .

For the foregoing reasons, this appeal deserves to be allowed and in that regard, the orders passed by the competent authority and by the revisional authority and by the learned Single Judge are quashed and set aside. The competent authority will again decide ,in light of all the facts and circumstancesa,on its own merits.

Appeal is allowed accordingly. In the facts and circumstances of the case, there will be no order as to costs.

Since the matter is very old, the authority shall decide the same as expeditiously as possible,before June 30,1998.

(C.K.Thakkar,J.)

(A.L.Dave,J.)